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L.L.P.
20333 SH 249
SUITE 600
HOUSTON TX 77070**

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DEC 30 2008

OFFICE OF PETITIONS

In re Application of	:	
Michael Kenoyer et al	:	
Application No. 10/814,364	:	
Filed: March 31, 2004	:	
Attorney Docket No. 199-0042US-C2	:	
	:	CORRECTED DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 14, 2006, to revive the above-identified application.

The petition decision mailed September 30, 2008 is **VACATED**.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 13, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Accordingly, the date of abandonment of this application is September 14, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that

the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

The form PTO/SB/64 indicates that the response submitted with the instant petition is in the form of a continuation application; however, the papers filed with the instant petition and purporting to be a continuing application do not constitute a complete application within the meaning of 37 CFR § 1.53(b).

37 CFR § 1.53(b) states, in pertinent part:

“Application filing requirements – Nonprovisional application. The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. § 112 containing a description pursuant by § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office.

As such, petitioner will not obtain the desired copendency of applications until papers meeting the minimum requirements of 37 CFR § 1.53(b) to obtain a filing date are received by the Office.

Application number 11/611,014 has been assigned to the papers accompanying the instant petition. Any papers attempting to comply with 37 CFR § 1.53(b) should be addressed to the ‘014’ application. Any reply to the instant decision in the form of a renewed petition should be directed to parent file 10/814,364.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

A handwritten signature in black ink, appearing to be 'Carl Friedman', with a long horizontal stroke extending to the right.

Carl Friedman
Petitions Examiner
Office of Petitions